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AUG 05 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, and
PEOPLE OF THE STATE OF ILLINOIS,

Plaintiffs,

v.

CITY OF WAUKEGAN, ILLINOIS;
ELGIN, JOLIET & EASTERN RAILWAY
COMPANY; GENERAL MOTORS
CORPORATION; LARSEN MARINE
SERVICES, INC.; and the
NORTH SHORE GAS COMPANY,

Defendants.

CIVIL ACTION NO.

04C 5172

JUDGE HART

MAGISTRATE SIDNEY I. SCHENKIER

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), and the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and on behalf of the Illinois Environmental Protection Agency ("Illinois EPA") (collectively, the "Plaintiffs"), file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and recovery of costs under Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9607. The United States seeks injunctive relief in order to remedy conditions in connection with the release and threatened release of hazardous

substances into the environment at the Waukegan Manufactured Gas and Coke Plant Site (the "Site"), Operable Unit 2 of the Outboard Marine Corporation Superfund Site ("OMC Site"), Waukegan, Illinois. The Plaintiffs also seek to recover unreimbursed costs incurred and to be incurred for response activities undertaken and to be undertaken at the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and the Defendants, pursuant to Sections 106(a), 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b), and under 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District under Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial district.

THE DEFENDANTS

4. Defendants City of Waukegan, Illinois (the "City") and Larsen Marine Services, Inc. are current owners of portions of the Site wherein hazardous substances are located, within the meaning of Section 107(a) (1) of CERCLA, 42 U.S.C. § 9607(a) (1).

5. Defendants Elgin, Joliet and Eastern Railway Company ("EJ&E"), General Motors Corporation ("General Motors") and North Shore Gas Company ("North Shore") are former owners and/or operators of a portion of the Site, at a time when hazardous substances were disposed there, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

GENERAL ALLEGATIONS

6. Between 1908 and 1971, the Site, a 36 acre rectangular parcel of land located between Waukegan Harbor and Lake Michigan in Waukegan, Lake County, Illinois, was

operated at various times as a creosote wood-treating facility, manufactured gas plant and industrial coke plant. From 1972 to 1989, the Site was used by the Outboard Marine Corporation for various activities including hazardous waste storage, public parking, snowmobile testing and fire training. A portion of the Site has been and is currently used for commercial marine activities and seasonal boat and trailer storage. The Site is Operable Unit 2 of the OMC Site.

7. Operation of the various industrial activities at the Site resulted in the releases of, among other hazardous substances, polynuclear aromatic hydrocarbons ("PAHs") and phenols from the wood treating processes, and arsenic, phenols, thiocyanate and ammonia from the gas and coke manufacturing processes, into the soils, sediments, groundwater and surface waters, including Waukegan Harbor and Lake Michigan.

8. On September 8, 1983, U.S. EPA placed the OMC Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B, which is a national list of priorities for response action under CERCLA, based upon relative risk of danger to public health or welfare or the environment. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA published the listing of the OMC Site at 48 *Fed. Reg.* 40658.

9. Construction of the OMC Site Operable Unit 1 remedy was conducted by OMC pursuant to a consent decree entered by this Court on or about May 1, 1989, in the case of *United States and the People of the State of Illinois v. Outboard Marine Corp.*, Civil Action No. 88-C-8571 (N.D. Ill.).

10. The remedy for Operable Unit 1 of the OMC Site included excavation of sediment and soils contaminated with polychlorinated biphenyl compounds ("PCBs") from Waukegan Harbor and the OMC Site. During construction of the Operable Unit 1 remedy by OMC, soils and sediments contaminated with creosote were placed on the Site during construction of a new

boat slip in Waukegan Harbor.

11. In or about September 1990, North Shore entered into an Administrative Order on Consent with U.S. EPA for the conduct of a remedial investigation and feasibility study at the Site. North Shore and General Motors completed a remedial investigation in 1995 and a feasibility study in or about November 1998 for the Site. On September 30, 1999, U.S. EPA issued a Record of Decision ("ROD") for Operable Unit 2 on which the State of Illinois (the "State") concurred.

12. The Operable Unit 2 remedy for contaminated soils includes excavation of the PAH remediation zone soils and off-Site treatment or disposal; in-situ stabilization or off-Site disposal of the arsenic remediation zone soils; combination vegetative, asphalt and building cover for marginal zone soils; institutional controls; and development of a Soil Management Plan. The Operable Unit 2 remedy for contaminated groundwater includes extraction, treatment and re-infiltration of contaminated groundwater; long-term monitored attenuation and groundwater use prohibitions.

13. On or about December 8, 2000 and July 2, 2001, U.S. EPA entered into additional Administrative Orders on Consent with EJ&E, General Motors, North Shore Gas and the Outboard Marine Corporation for the conduct of a pre-remedial design pilot study and remedial design for the Operable Unit 2 remedy. To date, the respondents to those Administrative Orders on Consent, with the participation of the Outboard Marine Corporation, which is currently in bankruptcy liquidation, have completed the remedial design work plan and quality assurance program plan ("QAPP") for Operable Unit 2.

14. U.S. EPA and the State have funded response actions related to the Site, including investigations and enforcement actions. To date, U.S. EPA has incurred response costs in excess

of \$100,000. To date, the State has incurred response costs in excess of \$55,000. The United States and the State expect to incur additional amounts for response actions at the Site.

15. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.1 *et seq.*, were spilled, leaked, discharged, or otherwise disposed of at the Site.

17. The presence of hazardous substances at the Site, and the migration of hazardous substances into the soils, sediment, groundwater and surface water at and around the Site, constitute releases and threatened releases of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

18. Each named Defendant is a "person," within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

FIRST CLAIM FOR RELIEF

19. Paragraphs 1-18 are realleged and incorporated herein by reference.

20. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

21. By Executive Order 12580 of January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of

U.S. EPA.

22. The Regional Administrator of U.S. EPA, Region 5, acting pursuant to his delegated authority, has determined in the ROD for Operable Unit 2 that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threatened release of hazardous substances at the Site.

23. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the United States is entitled to such relief from the Defendants as may be necessary to abate the danger or threat to the public interest posed by the release or threatened release of hazardous substances at the Site.

SECOND CLAIM FOR RELIEF

24. Paragraphs 1-18 are realleged and incorporated herein by reference.

25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(1) the owner or operator of a vessel or a facility, [and]

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * * * *

shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan. . . .

26. The United States and the State have incurred and will continue to incur costs of response actions not inconsistent with the National Contingency Plan, 40 C.F.R. § 300 et seq., to respond to the release or threatened release of hazardous substances at and from the Site, within the meaning of Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25).

27. Defendants are liable to the United States and the State for all response costs, including the costs of any removal and remedial actions, incurred in the past or to be incurred in the future, in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. § 300 et seq., by the United States and the State with respect to the Site, plus interest on the response costs, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State, respectfully request that this Court enter a judgment against Defendants as follows:

1. Order the Defendants to abate the threat posed by the release or threatened release of hazardous substances by performing the remedies selected by U.S. EPA, and concurred in by Illinois EPA, in the Operable Unit 2 ROD;
2. Order the Defendants to pay all response costs incurred by the United States and the State in response to the release and threat of release of hazardous substances at the Site, plus interest on those response costs;
3. Enter a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against the Defendants on liability that will be binding on any subsequent action to recover further response costs or damages;
4. Award Plaintiffs, the United States and the State, costs and disbursements in this action; and

5. Grant Plaintiffs, the United States and the State, such other and further relief as is just and proper.

Respectfully submitted,

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